

APPEAL NO. 021718  
FILED AUGUST 13, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 13, 2002. The hearing officer resolved the disputed issue by concluding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first compensable quarter. On appeal, the claimant expresses disagreement with this conclusion, as well as several of the findings of fact on which it is based. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

In deciding whether the hearing officer's decision is sufficiently supported by the evidence we will only consider the evidence admitted at the hearing. We will not generally consider evidence not submitted into the record, and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). With this in mind, and after reviewing the evidence attached to the claimant's appeal, we find that it does not constitute new evidence which requires consideration for the first time on appeal.

The hearing officer's Decision and Order contains a comprehensive summary of the evidence. The claimant disputes two findings of fact, which were stipulated to by the parties at the hearing. Specifically, the claimant disputes that her impairment rating is 15%, and that the qualifying period began on November 29, 2001, and continued through February 27, 2002. We note that the claimant expressed agreement with these stipulations at the hearing and, additionally, the evidence reflects that these findings are accurate. Accordingly, we perceive no error in the complained-of stipulated findings of fact.

The claimant disputes several other findings of fact, which formed the basis of the hearing officer's conclusion that she is not entitled to SIBs for the first quarter. Whether the claimant satisfied the good faith requirement for SIBs entitlement was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex.

App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). The hearing officer noted that the claimant's SIBs application does not reflect a documented job search during each week of the first quarter qualifying period. He was well within his province in determining that the claimant did not satisfy the good faith requirement for SIBs eligibility. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(5) and 130.102(e) (Rules 130.102(d)(5) and 130.102(e)).

With regard to the claimant's complaint of the hearing officer's finding that her unemployment during the period in question was a direct result of the compensable injury, it is noted that this finding is favorable to the claimant. As such, the claimant is not aggrieved by the finding and we decline to give it further consideration.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C. T. CORPORATION  
350 NORTH ST. PAUL STREET, SUITE 2900  
DALLAS, TEXAS 75201.**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge